IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :- 12.02.2007

Coram:-

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.623 of 2004
and
WAMP No.1119 of 2004

K.L.Bhat ... Appellant/2nd Respondent

vs.

1. The Deputy Commissioner
of Labour, Teynampet,
Chennai-600 006.

2. Bharat Overseas Bank Ltd.,
Head Office, rep. by its
General manager,
"Habeeb Towers",
796, Anna Salai,
Chennai - 600 002. ... Respondents/1st Respondent/Petitioner

Appeal against the Order of the learned single Judge dated 02.12.2003 made in W.P. No.20951 of 2001 presented to this Court under Article 226 of the Constitution of India to issue a Writ of Certiorari, the petitioner seeks to challange the order of the first respondent dated 20.04.2001 in T.S.E.No.28/95 in and by which, the first respondent set aside the order of dismissal dated 14.09.1995 issued to the second respondent.

For Appellant : Mr.NGR.Prasad,
for M/s.Row and Reddy

For Respondent-2 : Mr.S.Ravindran,
for M/s.T.S.Gopalan & Co.

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(Judgment of the Court, delivered by P.SATHASIVAM, J.)

The above Writ Appeal is directed against the order of the learned single Judge, dated 02.12.2003, made in W.P. No.20951 of 2001, in and by which, the learned Judge, after finding that the order of the appellate authority under the Tamil Nadu Shops and Establishments Act, viz., Deputy Commissioner of Labour, insofar it relates to the charge sheet dated 16.02.1995 is perverse, remitted the matter back to the authority to pass fresh orders as regards the charges levelled in the said Charge Sheet by making a detailed analysis of the respective evidence placed before it. In the same order, the learned Judge upheld the conclusion of the appellate authority on the charge sheet dated 23.05.1995.

2. Case of the appellant is briefly stated here-under,

According to him, he joined the 2nd respondent - Bharat Overseas Bank in the year 1980 and was given foreign posting in the year 1985. Subsequently, he was posted to Connaught Place Branch in the year 1989. In 1991, he was promoted as Regional Manager and posted to Chennai; and in 1994, he was further promoted as Chief Regional Manager. After new Chairman, by name Srinivasan, taking over charge of the Bank (who was subsequently removed by order of this Court in WP No.1407 of 1998, dated 19.11.1999), he started targeting the employees of the Bank by chargesheeting and dismissing them. According to the appellant, he was one amongst such victims. On 16.02.1995, a charge sheet was issued to the appellant for not having informed the Head Office regarding the advances granted by him in excess of the limit to M/s.Rakesh Kumar Mukesh Kumar during 1989- 1991. It is the case of the appellant that the Head Office was duly informed of the same and that when he called for certain documents, the same were not furnished to him. Not being sure of the outcome of the first charge, the Bank issued another charge sheet dated 23.05.1995 alleging that the appellant had not taken steps to approve the renewal of the lease of Bombay Fort Branch in time. However, the records produced before the appellate authority clearly indicated that on 29.12.2004, ie., the very day when the telex message reached his table, the appellant had approved the same and thereafter it was for the Premises Department to follow it up. He also informed one Prabhakar, Manager of Bombay Fort Branch, when he came on the line on 30.12.1994, that he had already approved for the renewal of the lease, and because of the said Officer's tardiness the lease was not renewed in time. However, the said Prabhakar was not proceeded against for the lapse but the appellant alone was singled out and chargesheeted. In spite of establishing his innocence, the appellant was dismissed from service and by that time, he had put in 15 years of unblemished service. Against the order of dismissal, he preferred appeal before the first respondent - authority, who held that the charges are belated and that the Bank was trying to make an issue of an alleged misconduct, which happened in the year 1991, after which the appellant had gained two promotions. The appellate authority, by holding that both the charges have not been proved, set

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aside the order of dismissal, against which, the Bank filed W.P. No.20951 of 2001. The learned Judge, by order dated 02.12.2003, though held that the 2nd charge dated 23.05.1995 has not been established, however, remanded the matter to pass fresh orders as regards the first charge sheet on the ground that the 1st respondent - authority has not applied its mind. Against the order of the learned Judge, the appellant has filed the present Appeal and, during the course of proceedings, he attained the age of superannuation on 30.06.2000.

3. Heard Mr.NGR.Prasad, learned counsel for the appellant and Mr.S.Ravindran, learned counsel for the 2nd respondent/Bank.

4. Mr. NGR.Prasad, learned counsel for the appellant, after taking us through details regarding the charge sheet dated 16.02.1995, entire enquiry proceedings, order of the appellate authority under the Tamil Nadu Shops and Establishments Act and the reasonings of the learned Judge, submitted that the appellate authority is fully justified in holding that the enquiry is bad and that the charges have not been proved. He further contended that inasmuch the appellate authority, only after analysing all relevant materials, arrived at a factual finding that the enquiry was not properly conducted, no adequate opportunity was afforded and that the charges have not been proved, the same cannot be lightly interfered with while exercising jurisdiction under Article 226 of the Constitution of India. He argued that, in view of the Audit Reports, wherein no adverse comment could be seen with regard to the alleged charges, the Bank is not justified in dismissing the appellant from service. According to him, failure to rely upon the Audit Report is fatal to the stand taken by the Bank. He further contended that, taking note of the unblemished service, the appellant was promoted in 1991 and 1994; in such circumstances, charge sheet dated 16.02.1995 relating to the period 1989-1991 cannot be sustained; and in any event, abundant facts are available to show that action was motivated at the instance of the then Chairman of the Bank.

5. On the other hand, Mr.S.Ravindran, learned counsel appearing for the Bank, contended that the lapse regarding the first charge came to the notice of the Chairman only in 1994 and action was taken in the year 1995, hence, there was no delay. According to him, merely because the audit reports have not been relied on or placed, it cannot be taken that the appellant did not indulge in any misconduct. He also contended that, only in 1991, the appellant was promoted and posting him as Chief Regional Manager in the year 1994 is not a promotion, and in any event, the Bank is not barred from proceeding with the charges levelled against the appellant. Finally, he contended that inasmuch as several documents have been marked before the appellate authority, in the absence of discussion regarding the same and statement of witnesses, the learned Judge is perfectly right in remitting the matter back to the appellate authority; hence, there is no valid ground for interference.

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6. We have verified all the relevant materials and carefully considered the rival contentions. Though the appellant was charge-sheeted on 16.02.1995 and on 23.05.1995, in view of the fact that the learned single Judge upheld the order of the appellate authority in respect of the 2nd charge sheet dated 23.05.1995 and remitted back the matter only in respect of the charge sheet dated 16.02.1995, we are concerned only with the said charge sheet and the findings rendered thereon by the authority.

7. The details regarding charge sheet dated 16.12.1995 are as follows:-

> "Charge No.1:- By obtaining URDP receipts for Rs.2,34,499.70 as against the stipulation of Rs.5,44,000/- you violated the terms of sanction dated 9.12.1989.
>
> Charge No.2:- By disbursing the documentary demand bills purchase limit without obtaining "no due certificate" from Andhra Bank, you again violated the terms of sanction dated 09.12.1989.
>
> Charge No.3:- You purchased the bills referred to in the Annexure from the firm Rakesh Kumar Mukesh Kumar far in excess of the limit sanctioned by Head Office under endorsement dated 09.12.1989.
>
> Charge No.4:- You purchased three number of bills from Dinesh Trading Corporation for an aggregate sum of Rs.3,91,395/- in excess of your powers and in the absence of any sanction from Head Office.
>
> Charge No.5:- You failed and neglected to submit excess report to Head Office in respect of the bills purchased by you from Rakesh Kumar Mukesh Kumar and its associate concern Dinesh Trading Corporation.
>
> Charge No.6:- You failed and neglected to take any steps on your own fro carrying out Chairman's directions contained in the note dated 24.03.1994.
>
> Charge No.7:- You committed an act of disobedience by failing to carry out the lawful and reasonable order of Chairman dated 24.03.1994.
>
> Charge No.8:- You did not disclose to Chairman at any point of time that the firm Rakesh Kumar Mukesh Kumar had availed of advances from Andhra Bank, Delhi.
>
> Charge No.9:- You failed and neglected to put up any note to Chairman in respect of either the interrogation made by CBI or your appearance before the Court in connection with the criminal proceedings which are presently pending against the partners of Rakesh Kumar Mukesh Kumar.

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Charge No.10:- You have failed to discharge your duties with utmost care, caution, diligence and honesty expected of an Officer of the Bank as a result of which the Bank is facing substantial monetary loss."

It is seen that the above mentioned charge sheet dated 16.02.1995 relates to an incident said to have occurred when the appellant was the Chief Manager, Connaught Place Branch, New Delhi, during the year 1989-1991. It is pointed out that though the charge was split up into 10 charges, it actually related to one account of Rakesh Kumar Mukesh Kumar during the year 1989-91. It is specifically mentioned that, after the alleged incident, the appellant was given two promotions; and the Bank did not come forward to place the Audit Reports.

8. Now let us see as to whether the enquiry was properly conducted and the appellant was afforded with adequate opportunity to put forth his case. While considering the said issue, it is relevant to point out that the main grievance of the appellant is that the charge sheet itself is highly belated and there is no explanation as to why the Bank took so much time to chargesheet him for an incident of the year 1989. In the departmental enquiry, according to the appellant, he was denied the assistance of one B.Ramji, Convener, National Forum for Bank Executives, and who was working as an officer in Indian overseas Bank, Madras, as his defence representative. Under Regulation 46 of Bharat Overseas Bank Limited Officers Conduct Discipline Appeal Rules, 1990, an Officer is permitted to take assistance of another Officer but he shall not engage legal practitioner for the purpose unless the Chairman having regard to the circumstances of the case so permits. It is pointed out that there can be no restriction in the rule for an officer being represented by another officer working in some other Bank if circumstances so permit and that inasmuch as other officers are subordinate to the appellant, it will be incongruous to secure the assistance of a Subordinate to defend him at the enquiry. In those circumstances, he requested the Chairman by letter dated 22.06.1995 to permit him to have the said Ramji, an Officer in Indian Overseas Bank, Madras, from the Banking industry itself, as his defence representative. The Enquiry Officer, by letter dated 29.06.1995, rejected the request. On 11.07.1995, the appellant requested the Enquiry Officer to grant him 15 days time to peruse certain documents and to locate a defence assistant; however, the Enquiry Officer, turning down the request, posted the enquiry next day and set the appellant ex-parte. Though there is some rationale in the action of the Enquiry Officer in turning down the request of the appellant since Ramji was not an Officer of the 2nd respondent-Bank, however, the Enquiry Officer is not justified in refusing to grant sufficient time for perusal of documents and to locate a suitable defence representative. As rightly pointed out, after rejecting his request, the Enquiry Officer should have afforded further opportunity to the appellant to select some other suitable officer as his defence representative and given sufficient time to peruse the documents. This aspect was properly appreciated by the appellate authority, who

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arrived at a conclusion that the enquiry was conducted in a very hurried manner without affording adequate opportunity to the appellant. Inasmuch as the charge sheet is clearly after 5-6 years of the alleged incident and in the absence of basic documents in respect of the charges, we are of the view that the appellant's request for grant of 15 days time to go through the documents and to locate any other suitable person as his defence representative should have been conceded to. The action and attitude of the Enquiry Officer, as rightly observed by the appellate authority, clearly prove that he did not follow the principles of natural justice and conducted the enquiry with ulterior motive and malafide intention.

9. Learned single Judge, after finding that the appellate authority has not analysed the materials particularly the evidence, remitted the matter in respect of the charge sheet dated 16.02.1995 for fresh disposal. Let us consider whether the learned Judge is justified in arriving at such conclusion and remitting back the matter to the authority.

10. Mr.NGR.Prasad, learned counsel for the appellant, after taking us through the entire order of the appellate authority, contended that the conclusion of the learned Judge is not warranted and not supported by acceptable material. He pointed out that, in para Nos.14 to 19, the appellate authority considered all the materials/evidence placed in respect of the charge sheet dated 16.02.1995 and, only after analysing the same, finally concluded that the charges listed in the charge sheet dated 16.02.1995 have not been conclusively proved against the appellant by letting in satisfactory evidence. Learned counsel appearing for the 2nd respondent-Bank contended that though certain documents were marked before the appellate authority, the same were not at all considered by it. On going through the discussion in the above mentioned paragraphs, we see no substance in the contention made. It is true that the appellate authority has not adverted to all the documents by taking the same one by one for discussion, however, it cannot be construed that it has not at all considered the documents received. In fact, it is the grievance of the appellant as well as the appellate authority that though a direction was issued for production of certain documents, the same were not produced. Inasmuch as there was an order by the appellate authority for production of the documents as claimed by the appellant, which according to the appellant supports his case, as rightly observed by the appellate authority, it is but proper for the Bank to have placed all those documents for consideration of the appellate authority. Unfortunately, the Chairman of the Bank, by replying that certain documents are not relevant for the issue, declined to forward the same to the appellate authority. As rightly pointed out by the learned counsel for the appellant, even while the documents ordered to be produced were in fact not produced, the learned Judge expected the appellate authority to give a finding whether the documents are required and the same support the case of the appellant. We are unable to accept the said proposition and the ultimate conclusion derived therefrom.

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11. It is not in dispute that on the application filed by the appellant, the authority, on consideration of relevancy of the documents, ordered for production of the same. We verified those documents claimed for perusal by the appellant. We are satisfied that, in the absence of production of the documents by the Management/Bank, the authority cannot be blamed for not discussing the same. Insofar as the documents produced by the Bank at the appellate stage relating not only to the charge sheet dated 16.02.1995 but also the 2nd charge sheet dated 23.05.1995, it cannot be said that the authority has not at all considered any of the documents. As said earlier, though the appellate authority has not mentioned the documents as exhibited, in fact, it considered the contents, relevancy and acceptability of the same and thereafter arrived at a proper conclusion, viz., that the allegations in the charge sheet dated 16.02.1995 have not been substantiated.

12. Now, let us consider the granting of two promotions; one in 1991 and another in 1994 and relevancy of the same in respect of the charges made in the charge sheet dated 16.2.1995. The charges, numbering 10, in the charge sheet dated 16.2.1995, according to the Bank, relate to the incident which had taken place when the appellant was serving at Connaught Place, New Delhi, during the period 1989-1991. Only thereafter, he was promoted as Regional Manager in April, 1991 and in August, 1994 he was again promoted as Chief Regional Manager.

Learned counsel for the appellant highlighted that, under the Service Rules of the Bank, promotion is not automatic and that it depends upon various factors. After being promoted twice, it is not open for the Bank to go into an old incident and chargesheet the appellant. As rightly pointed out, the Bank was well aware of these incidents when they promoted him.

Mr.Ravindran, learned counsel appearing for the Bank, by drawing our attention to the decision of the Supreme Court reported in 1998 (4) SCC 310 (Union Bank of India vs. Vishwa Mohan), contended that promotion to a higher cadre has nothing to do with the action initiated, based on the irregularities committed prior to promotion. The factual details involved in the Supreme Court decision show that various acts of misconduct came to the knowledge of the Bank in the year 1989 and thereafter, first charge sheet was issued on 17.02.1989. The Officer was promoted sometime in the year 1988. At that time, no such adverse material relating to the misconduct of the officer was noticed by the Bank on which his promotion could have been withheld. In the case on hand, as stated earlier, the charge sheet dated 16.02.1995 relates to an incident which had taken place when the appellant was serving at Connaught Place Branch during 1989-1991. It is not in dispute that, while promoting him as a Regional Manager in April, 1991, all the relevant records were verified and analysed. It is also pointed out that, again in August, 1994, the appellant was promoted as Chief Regional Manager. Though Mr.Ravindran, learned counsel for the Bank contended that the post of

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Chief Regional Manger is not a promotional post, undoubtedly, amongst the Regional Managers, Chief Regional Manger stands first and in any event, it is a recognition for his service. In such circumstances, we are of the view that the decision relied on by the learned counsel for the Bank is not applicable to the case on hand.

13. In D.Ramaswami v. State of Tamil Nadu (1982 (I) LLJ 349), the Hon'ble Supreme Court held that in the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of ineptitude or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service. Their Lordships further held as follows:-

> " We do not say that the previous history of a Government servant should be completely ignored, once he is promoted. Sometimes, past events may help to assess present conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we see no justification for needless digging into the past. "

It is also useful to refer to the following observation made by the Supreme Court in the decision reported in 2003 (II) LLJ 367 (K.N.Gupta vs. E.O., R.K.Rai, Allahabad Bank),

> " 10. In the background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten litigation indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. The stand of the appellant, as indicated above, is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the bank (which he quantifies at about Rs.46,000) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service. "

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14. Now, it would be of much relevance to refer to the Audit Report dated 21.06.1991. After analysing the records, though the Auditors have found that the Branch has discounted number of bills of M/s.Rakesh Kumar Mukesh Kumar without proper permission from the Head Office, on scrutiny, they also found that there was no outstanding in the bills of account of Rakesh Kumar Mukesh Kumar and Dinesh Trading Corporation. First of all, though the said Audit Report was available even on 21.06.1991, the same was not taken note of by the Bank. Secondly, though it shows that there was irregularity in sanctioning the bills without prior permission from the Head Office, absolutely there was no outstanding and also nothing to indicate misappropriation or loss to the Bank at the instance of the appellant. In such circumstances, the Judgement of the Supreme Court in K.N.Gupta's case referred to above is squarely applicable to the case on hand and we are of the view that, at the most, there was some procedural irregularity which cannot be termed to be negligence, warranting extreme punishment of dismissal from service.

15. Apart from the above infirmity, though it was admitted that every year the transactions/accounts of the Bank are subjected to auditing and reports are filed then and there, it is seen that those relevant documents were neither relied on nor considered before framing charge against the appellant. Inasmuch as the audit reports do not clearly show any financial loss to the Bank due to the alleged misconduct, we are of the view that the Bank ought to have considered the said aspect before taking action against the appellant. It cannot be claimed that Audit Reports are not relevant for the purpose of taking action against the officer of the bank when the reports are based on thorough scrutiny of all transactions by competent persons. This aspect was duly considered by the appellate authority and it was rightly concluded, "If there were any adverse remarks in the audit report about the appellant with regard to his dealings when he was employed in the Connaught place branch the respondent (bank) would not have promoted him as regional Manager and again as Chief Regional Manager." It is also relevant to note that the Bank has not relied upon the audit report with regard to the alleged charges against the appellant. Though it was pointed out on the side of the Bank that the Audit Reports were placed before the Enquiry Officer, admittedly, the same were not produced as supporting documents to corroborate the charges levelled against the appellant. As rightly mentioned by the learned counsel appearing for the appellant, in order to avoid the accusation of delay in framing charges, the Bank purposely avoided the audit reports and there is no plausible explanation for not relying on the audit reports. The contents of the audit reports clearly show that the appellant, in the transactions relating to Rakesh Kumar Mukesh Kumar, had exercised his discretionary powers in the interest of the Bank that too for the customers who had been maintaining good account with the Bank for more than 8 years. It is also seen that all the advances were secured by collateral securities which is also clear from the audit report. Though these relevant aspects have been elaborately considered by the appellate

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authority, the learned Judge ignoring the same, remitted the matter to the appellate authority for fresh disposal.

16. Mr.S.Ravindran, learned counsel appearing for the Bank, relied on a Judgment of the Supreme Court reported in 1996 (9) SCC 69 (Disciplinary Authority -cum-Regional Manger vs. Nikunja Bihari Patnaik) and submitted that proof of any loss is not required for taking action against misconduct. It is true that in the said decision, Their Lordships have observed that acting beyond one's authority is by itself a breach of regulation and it constitutes misconduct. Their Lordships further held that no proof of loss is necessary. While there is no dispute as to the proposition, in the case before the Supreme Court, there were findings to the effect that several advances and overdrawals allowed by the respondent beyond his authority had become sticky and irrecoverable. On the other hand, in the case before us, particularly in the transaction relating to Rakesh Kumar Mukesh Kumar, even as per the audit reports, there was no outstanding and all the amounts have been duly settled and the advances were well secured by way of collateral securities. In such circumstances, the above decision relied on by the learned counsel for the Bank is not helpful to their case. For the same reasons, the decisions of the Supreme Court reported in 1999 (4) SCC 759 (State Bank of India vs. T.J.Paul) and 2005 (1) LLN 13 (G.S.R.Sirur vs. State Bank of India) are not applicable to the present case though there is no quarrel as to the legal principles enunciated therein.

17. Though the learned single Judge made remarks on the disposal of the appeal by the authority, a perusal of its order clearly shows that, after analysis of the materials and finding various defects viz., non-supply of relevant documents, failure to consider two promotions even after the alleged incident in the year 1991, no adverse comment or entry in the Audit Reports etc., the authority has concluded that, "the respondent (Bank) has not followed the principles of natural justice and the enquiry has been conducted with ulterior motive and mala fide intention". As rightly pointed out by Mr.NGR.Prasad, the above mentioned findings on fact by the appellate authority cannot be lightly interfered with or ignored while exercising jurisdiction under Article 226 of the Constitution of India.

18. We have already pointed out that, in spite of the specific request made by the appellant and the order by the appellate authority for production of certain relevant documents, the Bank withheld the same; in such circumstances, as rightly observed by a Division Bench of this Court in the decision reported in 1996 (I) LLJ 169 (Parry & Co. Ltd. vs. Deputy Commissioner of Labour and another), the conduct of the Bank would lead to an inference that such evidence, if produced, would have gone against them.

19. Though the learned single Judge commented the conclusion of the appellate authority, a perusal of paragraph No.18 of the authority's order amply shows that it considered the merits and demerits of the

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evidence let in by both sides. In fact, the statement of the witnesses examined on the side of the Bank was not specific to the charge and it was also admitted by them that they did not remember all details because of the long gap between the alleged incident and the enquiry. As rightly pointed out by the appellate authority, no one alleged misappropriation of the Bank's funds by the appellant. In such circumstances, we are unable to accept the conclusion of the learned Judge in remitting the same to the authority for fresh disposal. As observed by us in the earlier paragraphs, though the appellate authority has not specifically referred the documents marked before it, it has in fact considered the contents of the same and rendered a specific finding. In this regard, it is useful to refer to a Division Bench decision of this court reported in 2005 (1) LLN 882 (S.Varadarajan vs. Deputy Commissioner of Labour). When an argument was advanced that the appellate authority under the Act had not considered the charges on merits and in detail, the Division Bench, rejecting such contention, concluded thus:-

> " 5. It must be understood that the appellate authority is the Deputy Labour Commissioner and he is not expected to write an elaborate and as good a judgment as a regular Civil Court would do. He is only an executive authority and we cannot expect the executive authority to write as good a judgment as a trained judicial officer. ....."

Considering the language used in sub-Sections (1) and (3) of Section 41 of the Act and the procedure for disposal of appeal as provided in Tamil Nadu Shops and Establishments Rules, 1948, we are in respectful agreement with the said conclusion. In the same decision, it was held that this Court under Article 226 of the Constitution of India cannot re-appreciate the evidence nor can it go into the question of adequacy of evidence and that as long as there is some evidence in support of the charges, the Court cannot interfere. In the case on hand, we have already discussed the reasonings and ultimate conclusion of the appellate authority holding that the charges listed in charge sheet dated 16.02.1995 have not been conclusively proved against the appellant by letting in satisfactory evidence. In view of such factual finding and in the light of our discussion in the earlier paragraphs, we are of the view that the question of remanding the matter to consider the charge does not arise. It is also relevant to mention that it is pointless to proceed with the rehearing without giving crucial/relevant documents sought for by the appellant. We are satisfied that the learned Judge ought not have remitted the matter back to the appellate authority since, as said earlier, the charge sheet was much belated, the appellant in the meantime gained two promotions, crucial documents that have been called for were not produced and the appellant attained the age of superannuation way back in the year 2000.

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20. Before concluding, we deem it useful to summarise our views. At the first instance, we make it very clear that there is no second opinion at all in respect of the legal principle that an errant official, for the lapses or shortcomings on his part which ultimately resulted in loss to the Bank/employer concerned or indicative of misappropriation on his part, should not be shown indulgence or dealt with leniently. Though on the one hand, we look upon matters of this nature very strictly and seriously; at the same time, if

(a) motive is apparent to target an official/employee; or

(b) the facts sufficiently show that there is utter violation of the principles of natural justice; or

(c) the punishment imposed is not proportionate to the nature of charge alleged / even proved, ultimately resulting in miscarriage of justice;

there cannot be any bar or fetter for the court to interfere with the matter to correct the injustice caused. We specifically and repeatedly adverted to very many instances, viz., much belated initiation of proceedings in the year 1995 for the alleged incident during 1989-1991; recognition for the services of the appellant by way of giving two promotions in 1991 and 1994 respectively, that too, after the alleged incident; unusual approach of the Bank in not coming forward with the Audit Reports in support of its case, probably fearing divulgence of their designs/lapses; purposeful hastiness by the Enquiry Officer in seeing that the enquiry is somehow concluded against the appellant by depriving him of the opportunity to take suitable defence assistance and to peruse vital documents to establish his innocence; imposing extreme punishment of dismissal from service for a trivial charge on a lapse which in no way can be termed as 'fraud', 'misappropriation' or 'disrupting the reputation of the Bank' and which admittedly had no adverse impact over the interests or business of the Bank; utter failure on the part of the Bank in producing certain crucial documents sought for by the appellant even before the appellate authority; existence of no valid ground or circumstance for re-examination by the appellate authority and also the fact that the appellant had attained the age of superannuation way back in 2000. The appellant had to face an enquiry without being afforded with the opportunity of defending his case/cause; and such trend adopted by an employer should not be encouraged. There should be a balanced consideration between the claims of the employer and the employee, in that, while justifying the cause of the employer on their taking action against their employees for their misconduct, courts cannot allow them to sack the employees just by alleging misconduct and by depriving them of their valuable right of defence. It is worthwhile to point out here that the learned single Judge has observed that his conclusion/decision to remit the matter back to the first respondent - appellate authority is fully supported by the decision of another learned single Judge of this Court reported in 1992 II L.L.N. 763 (T.C.U. Bank Limited vs. Assistant Commissioner of Labour). On going through the said decision, we find that it was a case, where an employee/watchman of the Bank concerned indulged

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in unruly activities in the bank premises under the influence of alcohol, creating an ugly scene and attracting the attention of the public. In that case, there was preponderance of probabilities for holding the charges proved against the delinquent employee who disrupted the reputation of the Bank. But, in the present case, the alleged misconduct did not produce any adverse effect and in fact, the act was done to maintain a good relationship with a customer and even if it is taken as an act of exceeding the limits, the punishment imposed, derailing from the established norms, resulted in utter miscarriage of justice. Various instances enumerated by us very much stare at the case of the Bank to hold in favour of the appellant. In view of the factual scenario of the present case, the conclusion of the learned single Judge based on the above mentioned decision cannot be sustained. Though the learned Judge took pains to analyse the issue and upheld the findings of the authority regarding the second charge; the fact, viz., entire evidence and materials have been deeply and broadly considered by the authority with reference to both the charges, has somehow escaped the consideration of the learned Judge. That being so, there would be no purpose at all in remitting the matter back to re-consider an already considered issue. Hence, we are of the view that the order of the learned Judge warrants interference inasmuch as the order of the appellate authority is well-founded and there is no need to interfere with the same or to remit the matter back.

21. In the result, the order of the learned single Judge, dated 02.12.2003, made in W.P. No.20951 of 2001, is set aside. Writ Appeal is allowed. No costs. Connected Miscellaneous Petition is closed. Considering the the fact that the appellant attained the age of superannuation as early as on 30.06.2000, the 2nd respondent/Bank is directed to settle his service / retiral benefits within a period of eight weeks from the date of receipt of copy of this Judgment.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Deputy Commissioner of Labour, Teynampet,
Chennai-600 006.

W.A. No.623 of 2004.

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